

guilty or as the verdict of the court after trial, the court:

(1) May delay sentencing pending receipt of any presentencing report ordered by it;

(2) Shall, before imposing sentence, hear such statements, whether written or oral, by the prosecution and defense, if any, in regards to mitigation, extenuation, previous good character of the accused, matters in aggravation, and permissible evidence of bad character of the accused. In this regard, the accused or his counsel may introduce any reasonable statement he wishes in mitigation or extenuation or any evidence of previous good character. The prosecution may introduce evidence in aggravation including prior federal, state, or Midway Islands convictions. The prosecution may introduce evidence of previous bad character only if the accused has introduced evidence of previous good character; and

(3) Shall thereafter impose any lawful sentence, including, a suspended or partially suspended sentence; revocation or suspension of any Midway Islands automobile, truck, motorcycle, or other motor vehicle, or boat or other vessel permit in cases involving violations of § 762.28; or placement of accused on probation.

#### **§ 762.70 Subpoenas.**

(a) The Clerk of the Court shall issue subpoenas for the attendance of witnesses. The subpoena must include the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena to a party requesting it, setting forth the name of the witness subpoenaed.

(b) The clerk may also issue a subpoena commanding the person to whom it is directed to produce the books, papers, documents, or other objects designated therein. The court may direct that books, papers, and documents designated in the subpoena be produced before the court at a time before the trial or before the time when they are to be offered in evidence. It may, upon their production, allow the books, papers, documents, or objects or portions

thereof to be inspected by the parties and their representatives.

(c) Any peace officer or any other person who is not a party and who is at least 18 years of age may serve a subpoena. Service of a subpoena shall be made by delivering a copy thereof to the person named.

(d) This section shall in no way be construed to limit federal subpoena powers, laws, or rules.

#### **§ 762.72 Appeals.**

(a) The defendant in any criminal case may appeal from any judgment of the Midway Islands Court to the Commander, U.S. Naval Base, Pearl Harbor, or such other command as may be designated by the Commander in Chief, U.S. Pacific Fleet, by filing a notice of appeal with the Senior Judge, and serving a copy on the attorney or judge advocate who represented the United States at trial.

(b) The notice must be served and filed within 15 days after the judgment of the Midway Islands Court.

(c) Upon receiving a notice of appeal, with proof of service on the attorney or judge advocate who represented the United States at trial, the Senior Judge shall forward the record of the case to the Commander, U.S. Naval Base, Pearl Harbor.

(d) The appellant must serve and file a memorandum with the Commander, U.S. Naval Base, Pearl Harbor, within 10 days after filing notice of appeal setting forth the grounds for appeal. The attorney or judge advocate who represented the United States at trial may file a reply memorandum within 10 days thereafter.

(e) The Commander, U.S. Naval Base, Pearl Harbor, may affirm, dismiss, or modify the order of the court, or exercise any of the other powers of the court. The judgment of the Commander, U.S. Naval Base, Pearl Harbor, is final.

(f) Cases tried in the United States District Court for the District of Hawaii shall be subject to federal laws and rules applicable to appeals.

#### **§ 762.74 New trial.**

A judge of the court may order a new trial as required in the interest of justice, or vacate any judgment and enter

a new one, on motion made within a reasonable time after discovery by the moving party of matters constituting the grounds upon which the motion for a new trial or vacation of judgment is made.

### Subpart E—Warrants; Arrests; Special Procedures

#### § 762.80 Warrants.

(a) *Arrest warrants.* (1) Any judge of the Midway Islands Court may issue a warrant for arrest if, upon complaint, it appears that there is probable cause to believe an offense has been committed and that the person named in the warrant has committed it. Probable cause, as used herein, means that there exist facts which are sufficient to lead a reasonably prudent and cautious man to a natural conclusion that the person to be arrested committed the offense for which he is to be arrested. The issuing officer shall:

- (i) Place the name of the person charged with the offense in the warrant, or, if his name is not known, any name or description by which he can be identified with reasonable certainty;
- (ii) Sign the warrant;
- (iii) Describe in the warrant the offense charged;
- (iv) Issue the warrant to a security patrolman, shore patrolman, or other duly designated peace officer for execution; and
- (v) Place in the warrant a command that the person charged with the offense be arrested and brought before him.

(2) Each person making an arrest on the Midway Islands shall take the arrested person, without unnecessary delay, before the Officer-in-Charge, U.S. Naval Air Facility, Midway Island, or a judge of the Midway Islands Court, as appropriate.

(3) The official before whom an arrested person is brought shall inform him of the complaint against him. The official shall also advise the arrested person that he has the right to remain silent and make no statement; that any statement made, whether oral or written, may be used against him, that he has the right to consult with a lawyer and to have a lawyer with him during questioning and to seek advice be-

fore answering any questions; that he may employ civilian counsel of his own choice and at his own expense; that if he cannot afford a lawyer, or is a service member, the court will appoint one for him if he so desires; and that, if he decides to answer questions, he has the right to stop answering at any time and terminate the interrogation. Before any security patrolman, shore patrolman, or other duly designated peace officer questions any person arrested, he must advise the arrested person of his rights, as set forth above, whether such questioning occurs before or after the arrested person is brought before the appropriate official as designated above in this section. No warnings need be given, however, prior to general on-the-scene questioning or identification inquiries.

(b) *Search warrants.* (1) Any judge of the Midway Islands Court may issue a warrant for search and seizure, if, after dispassionate and impartial consideration of all evidence, information, and circumstances involved, probable cause is deemed to exist. Probable cause, as used herein, means reliable information that would lead a reasonably prudent and cautious man to a natural belief that:

- (i) An offense probably is about to be, is being, or has been committed;
- (ii) Specific fruits or instrumentalities of the crime, contraband, or evidence exist; and
- (iii) Such fruits, instrumentalities, contraband, or evidence are probably in a certain place.

(2) If, after considering all information, the judge shall decide to issue a search warrant, such warrant shall specifically include the following information:

- (i) The time and date the warrant was requested;
- (ii) The name and capacity of the person, official, security patrolman, shore patrolman, or other duly designated peace officer requesting the warrant;
- (iii) The name and address of the person(s) suspected and the specific offense(s) of which he is suspected;
- (iv) The address, place, or structure which is to be searched;
- (v) The general nature of the items intended to be seized;